received before the $1000 charged to have been embezzled was paid to the defendant. He admits that he read it over, made no objection to the defendant as to the form of the contract and it is not pretended that he did not understand its terms . . . . . To our minds this evidence (telegram and letters) was totally insufficient to establish the relation of agency on the part of the defendant."

DAMAGES—EXEMPLARY—PAROL LICENSE—REVOCABLE—TREPASS.—The defendant had enjoyed a parol license to construct and maintain a ditch upon the land of the plaintiff's grantor. Upon the sale of the land to the plaintiff he revoked the license, but the defendant continued to use the ditch. In an action for damages for the trespass, *Held*, that exemplary damages may be recovered. *Hicks Bros.* v. *Swift Creek Mill Co.* (1902),—Ala.—, 31 South. Rep. 947, 57 L. R. A. 720.

For continuing to use a previous right which had been revoked the defendant is held liable in exemplary damages. His act was willful, but done in the belief that he had a right to do it. The principle is well established that if the defendant acts in good faith, believing that he has a right to do the act complained of, he is not liable in exemplary damages. AMERICAN & ENG. ENCY. LAW, vol. 12, p. 25; *Booth* v. *Lloyd*, 33 Fed. Rep. 593; *Yahoola R. & C. Co.* v. *Irby*, 40 Ga. 479; *Ulander* v. *Orman*,—Tex. Civ. App.—, 26 S. W. 1103; *Hays* v. *Askew*, 52 N. C. 272. But if the trespass be willful, although the defendant believed that he had a right to do the act, he may be liable in exemplary damages. This principle is not generally adopted but is sustained in *Jasper* v. *Purnell*, 67 Ill. 358; *Best* v. *Allen*, 30 Ill. 30; *Parker* v. *Shackleford*, 61 Mo. 68. That the act is unlawful is not alone sufficient to give exemplary damages. The law will not presume malice from the fact of the act being unlawful. *Brown* v. *Allen*, 35 Iowa 306; *Kisecker* v. *Monn*, 36 Pa. St. 313, 78 Am. Dec. 379. In the absence of malice, wantoness or oppression, exemplary damages should not be allowed. *Moore* v. *Crose*, 43 Ind. 30; *Stillwell* v. *Barnett*, 60 Ill. 210; *Carli* v. *Un. Dep. St. Ry. & T. Co.*, 32 Minn. 101, 20 N. W. 89; *Waldron* v. *Marcier*, 82 Ill. 550. The defendant is presumed to know the law and if his legal rights are so certain as to charge him with knowledge, he may be properly liable in exemplary damages for a willful, persistent trespass. But if so uncertain as that knowledge cannot be imputed to him the contrary would be true, and he would only be liable for consequential damages.

DAMAGES—REVERSING JUDGMENT FOR DEFENDANT IN ORDER TO GIVE PLAINTIFF NOMINAL DAMAGES,—In an action for slander, it was clear that the defendant had used the defamatory words complained of, yet the jury returned a verdict for the defendant. On a motion for a new trial, on the ground that the jury should have given the plaintiff at least nominal damages, *Held*, that a new trial will not be granted for that reason alone. *Milligan* v. *Jamieson* (1902), 4 Ontario Law Rep. 650.

The case does not show whether a judgment for nominal damages would have entitled the plaintiff to costs. Usually a judgment for the defendant will not be reversed in order to give the plaintiff the nominal damages to which he is clearly entitled. *Laubenheimer* v. *Mann*, 19 Wis. 519. But where a verdict for nominal damages would entitle the plaintiff to costs, a judgment for the defendant will be set aside. *Eaton* v. *Lyman*, 30 Wis. 42; *Jones* v. *King*, 33 Wis. 422. Notwithstanding this rule, however, there is a class of cases sometimes described as "hard actions," such as trespass, slander, libel, seduction, malicious prosecution, criminal conversation, deceit, gross negligence, actions for penalties, and the like, wherein, even though nominal dam-

ages would carry costs, a judgment for defendant will not be set aside unless there has also been a violation of some well settled rule of law: *Jones* v. *King*. The principal case was therefore correctly decided, regardless of the question of costs.

DEEDS—GRANTEES—CONSTRUCTION.—B., by warranty deed, conveyed certain land. The indenture is recited to be between "B., party of the first part, and C. B. and children, parties of the second part," etc., and the party of the first part "do grant, etc., to the *party* of the second part *his* heirs and assigns." The habendum stated, "unto the said party of the second part, and unto their heirs and assigns." The covenants run to the "party of the second part and unto their heirs and assigns." C. B. subsequently conveyed this same land to L. T., who, at the time of the conveyance of the land from B. to C. B., was the only child of C. B., now brings action against L, for an accounting, claiming to be a tenant in common of the land by virtue of the deed from B. to C. B., as stated above. *Held*, that T. can recover. *Tyler* v. *Lilly* (1903), — Miss. —, 33 So. Rep. 445.

The court said: "Upon the whole instrument, it is plain that "*his*" is absurd, foolish, and unmeaning, unless applied to the party of the second part; and we, without hesitation, so apply it. This view harmonizes the whole instrument, and takes it out from under the wholesome rule that, where the granting clause is plain it governs, though the habendum clause be in conflict. Here the granting clause becomes clear only by a survey of the whole instrument." It is a familiar rule of construction that all parts of a deed are to be construed together, and all parts given effect, if possible. *Case* v. *Dexter*, 106 N. Y. 548, 13 N. E. Rep. 449; *Jackson* v. *Meyers*, 3 Johns. (N. Y.) 388. It is equally true that where the operative part of a deed is clear and unambiguous, it cannot be controlled by the recitals, habendum, or other parts of the deed. *Dunbar* v. *Aldrich*, 79 Miss. 698, 31 So. Rep. 341. In each case, the court seeks to ascertain, not what the grantor intended to do, but what he, in fact, did. *Smith* v. *Lucus*, 18 Ch. D. 542; *Behn* v. *Burners*, 3 B. & S. 749; ELPHINSTONE ON INTER. OF DEEDS 92, *p 49. In *Martin* v. *Jones*, 62 Ohio St. 519, land was granted to A. J. and his children after him . . to have and to hold said premises to said A. J. and his heirs forever. *Held*, that A. J. took an estate in fee. In a Missouri case the granting clause of a deed was to M. "her children and assigns forever," the habendum was to the said M., "her heirs and assigns forever." M. had eight children living at the time the deed was executed and delivered. *Held*, that M. took a fee simple. *Rines* v. *Mansfield*. 96 Mo. 394, 9 S. W. Rep. 798.

DEEDS—RESERVATION—CONSTRUCTION—EXTENT OF PROPERTY.—A sold certain land to B reserving a building, "known as the chapel," together with the "land on which the said building stands." About forty feet from the building were some horse-sheds which were erected to be used in connection with the chapel. The chapel and horse sheds were enclosed on three sides with a fence. When the defendant was viewing the premises before purchasing them she was in a position where she saw the chapel and where she saw or could have seen the enclosure. After B had purchased the premises, she entered the above named enclosure and tore down and removed the horse sheds. The referee found that sheds and ground within the enclosure were not necessary to the reasonable enjoyment of the chapel. In an action by A against B for trespass and damages, *Held*, that A could recover. *Weed* v. *Wood* (1903), — N. H. —, 53 Atl. Rep. 1024.

The court said: "The evidence establishes by a balance of probabilities that the parties understood and intended that the words 'land on which said